



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.008

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The questions presented are:

Do contribution limits articulated in §23.3(1) apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC)?

Contribution limits articulated in §23.3(1) do not apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC) unless the contributions received by these continuing committee/political action committees are restricted or designated for a particular candidate. Contributions made by these committees to enumerated candidates are subject to the \$2,600 limitation per election.

Does §23.3(3) prohibit the committees from taking contributions from corporations or labor unions?

Because these continuing committees/political action committees are not listed as prohibited recipients in §23.3(3)(a) and are specifically included in §23.3(12), they are not prohibited from taking contributions from corporations, associations, and partnerships formed under chapters 347 to 360, RSMo.

Because political action/continuing committees are excluded from the prohibition in §23.3(3) (a) and are authorized to receive contributions from unions in §23.3(12), these committees are authorized to receive contributions from labor organizations and unions.

Does the exception to the prohibition against committee-to-committee transfers articulated in §23.3(13) apply to these committees?

Because the HRCC and MSCC meet the definition of state house and state senate committees per political party and have been designated to the Commission as such, the prohibited committee transfers in §23.3(12) do not apply to these committees under the express exemption language of §23.3(13).

Summary of Analysis

Application of Contribution Limits

Do contribution limits articulated in §23.3(1) apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC)?

Article VIII, § 23.3(1) sets forth the following contribution limits to elect an individual to certain offices.

3. (1) Except as provided in subdivisions (2), (3) and (4) of this subsection, the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

(a) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, office of state senator, office of state representative or any other state or judicial office, two thousand six hundred dollars.

This limitation places prohibitions on any "person" who either makes or receives contributions, and places a "shall not exceed" limitation on their contribution activity. "Person" is defined in §23.7(19) to include committees.

The two committees referenced in your questions are continuing committees/political action committees.¹

Unlike candidate committees which have a specific purpose related to a candidate, continuing and political action committees can have multiple purposes as follows:

"Continuing committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. "Continuing committee" includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures; §23.7(6) (c).

"Political action committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee, political party committee, campaign committee, exploratory committee, or debt service committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. Such a committee includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures. § 23.7 (20).

The Commission incorporates Commission Opinion 2017.02.CF.003.

A continuing committee/political action committee is created for multiple purposes, including supporting or opposing candidates and supporting or opposing ballot issues, even if the committee has not yet identified particular candidates or ballot measures to support or oppose. In addition, this type of committee is one "of continuing existence" and, therefore, may continue in operation beyond any one election cycle.

In order to satisfy the intent of the limitation, the contributing person must intend for the contribution to be used for the election of an individual to one of the enumerated offices. Therefore, the \$2,600 contribution limit per election presumptively does not apply to contributions received by a continuing committee unless a contribution to a continuing committee has been restricted or designated for a particular candidate. While the committee may ultimately expend money advocating for a specific individual during a campaign, the limitation specifically applies to "contributions made by or accepted from any person." §23.3(1). Thus, contributions made to enumerated candidates by a continuing committee/political action committee are subject to the \$2,600 limitation.

The language in §23.3(1), is similar to §130.032, RSMo (repeal effective December 31, 2006) which previously imposed contribution limits although in different amounts. While that law was in effect, previous Commission opinions also found that the contribution limits did not apply to contributions received by continuing committees, MEC No. 1995.01.102, <http://mec.mo.gov/Scanned/PDF/Opinions/116.pdf>, nor to campaign committees, MEC No. 1996.03.124, <http://mec.mo.gov/Scanned/PDF/Opinions/185.pdf>.

However, if a contribution received by a continuing committee, or a portion of that contribution, is restricted or for a particular candidate, the \$2,600 contribution limit per election applies because the contribution is received with the purpose of electing an individual candidate to office. This opinion is consistent with an earlier Commission Opinion, MEC No. 1995.10.156, <http://mec.mo.gov/Scanned/PDF/Opinions/149.pdf>.

§130.041.1(10), RSMo, instructs committees how to report contributions restricted or designated for a particular candidate.

Contributions from Corporations or Labor Organizations

Does §23.3(3) prohibit the committees from taking contributions from corporations or labor unions?

§23.3(3) (a), of the Missouri Constitution provides prohibitions on corporate contributions as follows:

It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from unions and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time..." .

Both political action committees and continuing committees are uniquely defined in §23.7 and specifically used in various other provisions of Article VIII, §23. Because they are not listed as prohibited recipients in §23.3(3)(a) and are specifically included in §23.3(12), political action/continuing committees are not prohibited from taking contributions from corporations, associations, and partnerships formed under chapters 347 to 360, RSMo.

§23.3(17) defines "labor organization" as:

[a]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

§23 does not define "union" as that term is used in §23.3(12). Because political action/continuing committees are excluded from the prohibition in §23.3(3)(a) and are authorized to receive contributions from unions, the committees in your request are authorized to receive contributions from labor organizations and unions.

Prohibition against Committee-to-Committee Transfers

Does the exception to the prohibition against committee-to-committee transfers articulated in §23.3(13) apply to these committees?

§23.3(12) enumerates what types of entities may donate to political action/continuing committees and what types of contributions are proscribed. §23.3(12) also prohibits political action/continuing committees from receiving contributions from other political action/continuing committees, candidate committees, exploratory committees and debt service committees.

§23.3(13) enacts an exception to the prohibited committee contributions to other committees as follows:

(13) The prohibited committee transfers described in subdivision (12) of this subsection shall not apply to the following committees:

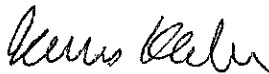
(a) The state house committee per political party designated by the respective majority or minority floor leader of the house of representatives or the chair of the state party if the party does not have majority or minority party status;

(b) The state senate committee per political party designated by the respective majority or minority floor leader of the senate or the chair of the state party if the party does not have majority or minority party status.

Because the HRCC and MSCC meet the definition of state house and state senate committees per political party and have been designated to the Commission as such, the prohibited committee transfers in §23.3(12) do not apply to these committees under the express exemption language of §23.3(13).

The Commission directs you to Opinions No. 2017.02.CF.005 and 2017.02.CF.006 also issued on this day for additional guidance that may relate to your questions.

Sincerely,



James Klahr
Executive Director